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ABSTRACT

This booklet on sexual harassment on college campuses covers sexual harassment law, harassment prevention, protection from liability, and handling allegations. Chapter 1, "What Is Sexual Harassment?" defines the term and gives an overview of sexual harassment law. Chapter 2, "How Does Sexual Harassment Law Apply in Actual Situations?" illustrates these legal concepts including faculty-student issues and student-student issues with numerous examples. Subsequently, chapter 3, "What Is the Liability of the Administrator and Institution?" discusses the consequences if sexual harassment does occur and the costs involved in litigation; and chapter 4, "Practices To Implement Sexual Harassment," provides suggestions for what administrators must know to investigate sexual harassment claims and specific actions to take when allegations of sexual harassment occur. A final section outlines important elements of a sexual harassment policy. Appendixes contain samples of the forms and documents needed to create and maintain effective sexual harassment policies and procedures with a sample sexual harassment policy, a sexual harassment incident form, advice regarding sexual harassment, a sexual harassment survey, and list of additional resources. (Contains 17 references.) (JB)

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Preventing Sexual Harassment On-Campus:

Policies and Practices for Higher Education

Ben T. Alien, Esq.

College and University Personnel Association

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I dedicate this book to my daughters, Torrie and Shaunna, and to my granddaughter, Kaitlin.

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Preface

"Jury Awards $7.1 Million in Sex Case...Punitive Damages"
"$5 Million in Damages in Sex Case"
"Dating Game: Office Romances Come under Scrutiny"
"Same-Sex Sex Harassment Comes Out of the Closet"
"Ex-Student Sues Professor...for Sexual Harassment"
"The High Cost of Sex Harassment"

These headlines emphasize the serious nature of sexual harassment and how important it is for society to recognize and prevent such intolerable behavior. The campus community is not immune from sexual harassment—higher education administrators often have to confront this difficult issue in their jobs. I have written this book to provide the higher education administrator a concise resource to attempt to avoid sexual harassment on-campus—and glaring headlines, such as those listed above.

This book first gives an overview of sexual harassment law and illustrates these legal concepts with numerous examples. After providing this foundation, there are recommendations and suggestions on how to prevent harassment and on how to reduce exposure to liability. Descriptions of the consequences for both the administrator and the institution if sexual harassment *does* occur is included. Because an administrator must know how to investigate sexual harassment claims, I discuss specific actions to take when allegations of sexual harassment occur. In the appendices, there are samples of the forms and documents needed to create and maintain effective sexual harassment policies and procedures.

My goal with this book is to assist those working on-campus in the prevention of sexual harassment. The desire and the climate to prevent harassment can occur only with committed leadership. Therefore, each administrator needs to examine his or her own institution for unique risks of harassment and must take appropriate actions to prevent that harassment. That process can begin with this book.

Ben T. Allen, Esq.
Professor of Business Law
Humboldt State University
Arcata, CA
February, 1995

About the Author

Ben T. Allen has been an active member of the California State Bar Association for over 20 years. He has been a criminal prosecutor, practiced civil law, and has extensive trial and business consulting experience. He received his law degree from the University of San Diego School of Law.

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Chapter 1

What Is Sexual Harassment?

Sexual harassment is a serious issue for all institutions of higher learning—whether public or private, two year or four year, religious or secular. Administrators cannot plead ignorance on the topic—higher education institutions must abide by the law. Therefore, administrators, especially human resource professionals, must understand the numerous legal definitions of sexual harassment, which derive from court cases and federal laws and guidelines, in order to combat it on-campus. This chapter explains sexual harassment doctrine to provide a sufficient legal background to analyze situations.

Explanations of Sexual Harassment

Defining sexual harassment

A general definition of sexual harassment is any unwelcome, threatening, demeaning, humiliating, ridiculing, or offensive conduct or situation that unreasonably interferes with a person's ability to perform his or her job and is based on the gender of that person.

Stated differently, sexual harassment is any conduct or situation of a sexual nature that, on the basis of sex differences, significantly impairs a person's ability or opportunity to perform his or her job or educational pursuits. Sexual harassment also is the creation of an intimidating, hostile, or offensive academic or work environment based on activity or behavior of a sexual nature.

Sexual harassment is not limited to traditional concepts of sex or sexual acts. It does not need to take the form of sexual advances or have sexual overtones.[1] A serious form of sexual harassment is pervasive harassment or unequal treatment that would not occur except for the gender of the employee or student and that creates a hostile work or education environment. Sexual harassment can include many forms such as:

- ***verbal harassment***—e.g., derogatory or demeaning comments, epithets, or slang denigrating to a sex;
- ***physical harassment***—e.g., blocking access, physical interference with work;
- ***visual harassment***—e.g., nude or derogatory posters, demeaning graffiti;
- ***unwanted sexual requests***—e.g., any request for sexual favor that is a condition of employment.

Sexual harassment is 'unwelcome' conduct

In legal cases, conduct is examined to determine whether the victim "welcomed" the behavior or activity. The test is not whether the victim "consented" to the acts.

Even though conduct may have been consented to, if it is unwelcome, it can be sexual harassment. Even though a person is in a consensual sexual or physical relationship, that relationship may be unwelcome. What appear to be consensual relationships between faculty and students or supervisors and employees may well be sexual harassment.

The Supreme Court, in *Meritor Savings Bank v. Vinson*, stated that, in the determination of whether conduct was welcome or unwelcome, the judge or jury deciding a sexual harassment case should take into consideration if the complaining party invited, incited, or solicited the conduct. In *Meritor*, the Court looked to see whether sexual activity or comment was invited by the victim's sexually oriented language or conduct. The Court said that Vinson's failure to object to sexual relations with her supervisor was not in itself welcoming the conduct, because of her "fear of losing her job."[2] This court case illustrates that

power differentials (such as between faculty and students or supervisor and employee) may affect the ability or willingness of the victim to object to the unwelcome conduct.

Standards for evaluating sexual harassment

Conduct is examined from the perspective of the victim and by applying what is called a "reasonable person" standard.[3] The reasonable person standard is a legal concept that takes an imaginary person who does everything in a reasonable manner as a model for comparison. This standard has a long history in American law and has been used by jurors in negligence cases for well over a century. The actual application of this standard is based on numerous court decisions that define reasonable behavior. This book provides examples and suggestions of behavior using this standard. The term "reasonable victim" also is used to indicate this perspective.

An administrator must look at a situation or at conduct from the viewpoint of a reasonable person in the same or similar circumstances. If, for example, the victim is a woman, all of the facts and circumstances of the conduct must be examined from the perspective of a woman (this is sometimes referred to as the "reasonable woman" standard).[4] In other words, an administrator cannot assume that, if an act or situation does not bother male staff members, it is not sexual harassment. An administrator ought to examine the campus environment and institutional sexual harassment policies from the perspective of both men and women.

Sexual harassment occurs in two forms

The courts recognize two different forms of sexual harassment—*quid pro quo* and hostile work environment.[5] The courts define them as follows:

1. ***quid pro quo***—This form exists when a term or condition of employment is conditioned expressly or implicitly on the employee's participation in or acquiescence to a demand or request of sexual acts.
2. ***hostile work environment***—This type of sexual harassment is conduct in or about the workplace that creates an intimidating, hostile, or demeaning environment or situation and that is inimical to a person's job performance and is based on differences in sex.

Sexual harassment and the EEOC

The Equal Employment Opportunity Commission (EEOC), one of the federal agencies charged with enforcing sexual harassment law, adopted a legal definition of sexual harassment, stated below, which is commonly accepted. This definition, however, is not particularly understandable without court interpretations. While many sexual harassment policies include this definition, more precise language for a campus policy is provided in Appendix A.

> Harassment on the basis of sex is a violation of [the law]. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.[6]

The EEOC also says that harassment is unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of gender and that: (1) creates an intimidating, hostile, or offensive work or education environment; (2) unreasonably interferes with an individual's work or academic performance; or (3) adversely affects an individual's employment or educational opportunities.[7]

Sources of Sexual Harassment Law

Federal law

Federal laws commonly are applied in sexual harassment cases, and many believe these laws were adopted in recent years. In fact, federal sexual harassment laws have existed for almost three decades. Significant increases in sexual harassment complaint filings with the EEOC, however, *have* occurred recently, most likely spurred by public controversy surrounding Supreme Court confirmation hearings for Clarence

Thomas, and subsequent extensive media coverage of sexual harassment cases.[8]

The following brief history of federal sexual harassment law is a good foundation for understanding current legal concepts.

1964—In an attempt to defeat the passage of the Civil Rights Act of 1964, a conservative Southern Congressman added the category "sex" to the listing of protected classes. Much to the surprise of the Congressman and his supporters, the act passed as amended. Because of the addition, differences in treatment based on sex became a legal basis for sexual harassment liability. Due to minimal legislative debate about this category, the scope of coverage was not clear.[9]

1980—The EEOC determined that sexual harassment is a violation of the 1964 Civil Rights Act and adopted as regulation the sexual harassment definition now commonly accepted. Also, *Alexander v. Yale* recognized that deprivation of "educational" benefits can be a violation of Title IX.[10]

1986—The U.S. Supreme Court, in the case *Meritor Savings Bank v. Vinson*, accepted the EEOC definition and held that sexual harassment includes the hostile work environment form in addition to the concept of *quid pro quo*.[11] The Court also held that the legal test to be applied to conduct is not whether the harassing conduct lacked consent, but if the conduct was unwelcome.

1992—The U.S. Supreme Court decided in *Franklin v. Gwinnett County Public Schools* that students may recover monetary damages under Title IX for sexual harassment.[12]

1993—The U.S. Supreme Court decided *Harris v. Forklift Systems*.[13] The decision states that a victim can recover damages if he or she can prove the environment in the workplace was abusive to a reasonable person. The Court held that the victim does not have to prove individual psychological harm.

The two primary federal laws used in sexual harassment cases against higher education institutions are Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.[14] Since higher education institutions are complex organizations, the particular law applied in a case will vary. For example, an aggrieved employee or paying visitor to an event likely would use the provisions of Title VII (enforced by the EEOC). An aggrieved student would use Title IX (enforced by the Office of Civil Rights), which applies to any education program or activity that receives federal funds.

State law

Most states have adopted statutes that prohibit discrimination (including sexual harassment) in employment and housing situations and that vary regarding coverage and extent of damages imposed.[15] Some states also prohibit discrimination and harassment based on sexual orientation. These state laws generally are parallel to federal law.

Since some states have additional specific rules that should be considered, a higher education human resource administrator should consider contacting the school's state enforcement agency to determine specific state requirements. For example, a California law requires employers to post in the workplace a copy of the state regulations regarding sexual harassment and to distribute to employees information about sexual harassment.[16] California law also mandates that certain organizations (such as schools) have sexual harassment policies.[17]

Tort law

When an attorney makes a decision to bring a claim and lawsuit on behalf of a sexual harassment victim, tort allegations usually will be included in addition to claims of violations of state or federal law. Higher damages may be obtained in civil tort actions. Also, tort actions often allow for recovery of attorney's fees and punitive damages when some civil rights actions do not allow or do place limitations on those damages.

"Tort" is the name for the body of law that applies when one person intentionally or negligently injures another person. That injury can be physical, emotional, or economic.

Common tort actions in the area of sexual harassment include:

- ***battery and assault***—Battery is the intentional and unconsented touching of another person. Assault is the threat to do such touching. Any unconsented and intentional (as contrasted to "accidental") touching can be a battery. For example, an unconsented pat on the buttocks is a battery.
- ***infliction of emotional distress***—This tort is intentionally engaging in outrageous conduct that inflicts emotional damage. An academic institution that is a hostile environment for women may, for example, employ a professor that makes statements to a student that are outrageous, such as denigrating comments about personal appearance, which causes the student to withdraw from a class.

- ***defamation***—Defamation is communication of untrue oral or written statements that damage a person's reputation. An example is an employer who makes untrue statements about another employee's sexual activities in the presence of third parties.
- ***false imprisonment***—This tort is the restraining of someone or the blocking of someone from going to where that person has a right to be. For example, two male workers who stand in front and behind a female worker and refuse to allow her to move is false imprisonment, and it is also sexual harassment.

Employment law—wrongful termination

Administrators need to be aware that wrongful termination suits will lead to large damages! The days of "employment at will" (fire an employee at any time) are virtually gone.

The administrator walks a tight rope—if a harasser is not fired, the institution may face liability to the victim for failure to take action to stop harassment. If the harasser is fired, the school may face liability from the alleged harasser for wrongful termination. Additionally, if an administrator fires the victim for complaining of the harassment, that administrator will face liability. For example, it is reported that a company fired a female employee rather than losing the business of one of its primary customers who was harassing her. The company was liable for wrongful termination and $2.2 million in damages has been requested.[18] The solution to the dilemma is to have and to use effective policies and procedures, which is discussed in detail in Chapters 4 and 5.

Numerous theories exist in the law to find liability and allow for damages if an employer improperly terminates an employee. Basically, the liability lies on the premise that an employer fired an employee in breach of contract or in violation of public policy. The termination of an employee can be either express or constructive. An express termination is one done in words, either written or spoken—the usual situation of firing someone. If this firing is done because the employee refuses sexual advances or objects to other sexual harassment or because the employee complains of sexual harassment, wrongful termination has occurred.

Additionally, if a victim reasonably quits his or her job because of intolerable working conditions, there may be liability for improper termination based on theories of constructive termination (forcing an

employee to quit by action or inaction, rather than by words). If an employer fails to stop or to prevent harassing conduct and that causes the victim to quit employment, the employer is liable just as if it had fired the employee directly and wrongfully.[19]

A way colleges and universities may avoid losing constructive discharge lawsuits is the existence and use of not only an effective sexual harassment policy but also a formal procedure for addressing complaints. Failure to use or to have such policies and procedures is strong evidence for liability. It also is essential to disseminate these to staff and students and to provide training to recognize and prevent sexual harassment.

Without a proper sexual harassment policy and procedure, employers—including institutions—may be liable. In one court case, a maid at a hotel was subjected to a pattern of harassment by her supervisor. She reported the harassment to a female supervisor who then called her demeaning names and who took no action to stop the harassment. After the victim sustained further abuse, she quit. She later sued and the court held the supervisor *and* the hotel liable for constructive discharge for failure to take reasonable action.[20]

In contrast was a sexual harassment case against a bank. Again, a woman was subjected to a pattern of sexual harassment by her male supervisor. She reported the behavior to the harasser's superior, who began an immediate investigation and conducted an interview with the harasser. The sexual harassment incidents also were reported to higher levels of management who investigated promptly. Upon completion of the investigation, a written reprimand was placed in the harasser's personnel file. The court held that this action was sufficient and the bank and supervisors were not liable for constructive discharge.[21]

Another aspect of wrongful termination liability arises in relationship to the accused harasser. If an employer terminates someone for harassment and does so without a thorough and neutral investigation, the terminated employee can win damages for unlawful firing. Considering the professional and personal stigma associated with accusations of sexual harassment, the possibility of serious litigation is quite high. This reason is one of the many that policies and procedures must be created and followed carefully.

Notes

1. *Robinson v. Jacksonville Shipyard, Inc.*, 760 F. Supp. 1486 (1981); *Hall v. Gus Construction Co., Inc.*, 842 F. 2d 1010 (1988).
2. *Meritor Savings Bank v. Vinson*, 106 S. Ct. 2399, 477 U.S. 57 (1986).

3. *Ellison v. Brady*, 924 F. 2d 872 (1991).
4. EEOC *Guidelines on Harassment Based on . . Gender*, 29 CFR 1609 (1993).
5. EEOC *Policy Guidance on Current Issues of Sexual Harassment*, EEOC Notice 915-050 (March, 1990).
6. 29 CFR 1604.11 (a).
7. 58 CFR 1609.1.
8. A 41 percent increase in the number of sexual harassment claims filed with the EEOC during first quarter of 1992, as compared with the first quarter of 1991, has been reported. *BNA Employee Relations Weekly*, 23 March 1993, p. 319.
9. Lindgren, J. Ralph, and Taub, Nadine, 1988. *The Law of Sex Discrimination*, St. Paul, MN: West Publishing Co., p. 110-11.
10. 631 F. 2d 178 (1980).
11. 106 S. Ct. 2399, 477 U.S. 57 (1986).
12. 112 S. Ct. 1028, 117 L. Ed. 2d 208 (1992).
13. 114 S. Ct. 367, 1993 US Lexis 7155 (1993).
14. 42 USC 2000e; 20 USC 1681 *et seq.* and 42 USC 2000e *et seq.*
15. The apparent exceptions are Arkansas and Alabama.
16. Calif. Government Code section 12950.
17. Calif. Education Code section 200 *et seq.*
18. "Harassment of Workers by 'Third Parties' Can Lead to Maze of Legal, Moral Issues," *The Wall Street Journal*, 26 October, 1992, p. B1.
19. *Llewelyn v. Celanese Corp.*, 693 F. Supp. 369 (1988).
20. *EEOC v. Hacienda Hotel*, 881 F. 2d 1504 (1989).
21. *Barrett v. Omaha National Bank*, 726 F. 2d 424 (1984).

Chapter 2

How Does Sexual Harassment Law Apply in Actual Situations?

Understanding the legal history of sexual harassment is only the first step toward preventing it on-campus. There are many issues under the broad topic of sexual harassment—including faculty to student dynamics—that are specific to colleges and universities. Human resources practitioners must be able to apply the general workplace law to collegial situations in order to identify behavior and situations that constitute sexual harassment. All of the scenarios summarized and explained in this chapter are variations of actual cases.

Faculty—Student Issues

A particularly difficult problem at higher education institutions is the issue of faculty-to-student harassment. All of the previously discussed law and definitions of sexual harassment apply in these situations. With these, however, are issues of free speech, academic freedom, tenure, and pedagogy that create a dilemma between respecting traditional academic concepts and prohibiting sexual harassment of students.[1] Failure to observe policy and tenure rules for faculty can result in lawsuits. Failure to timely and reasonably investigate and

discipline sexual harassment offenders can result in lawsuits. Balancing academic tradition and prohibition of sexual harassment can be difficult. Administrators must remember to proceed in a consistent manner in the adoption and enforcement of sexual harassment policies.

At institutions of higher learning, direct sexual harassment generally is recognized and discouraged, although, unfortunately, it still all too frequently occurs. Examples of this direct form of harassment are enhanced grades in exchange for sex and favored treatment in class for the student who flirts with the professor.

Not often recognized, however, are less direct forms of sexual harassment. These exist in the form of personal attention that is unwanted or inappropriate and is directed toward a student by faculty (or staff or administrator). For example, a student might appear to agree to have lunch or dinner with a professor or faculty adviser; but if the request is not welcome (e.g., incited or encouraged), it may be sexual harassment, especially if the student feels "pressured" to accept. Another example of sexual harassment is the professor who gives personal notes to a student, writes personal comments on a student's papers, or makes personal gifts to a student. The professor is sexually harassing if he or she focuses on a particular student or group of students based on gender differences and in an unreasonable manner.

These less direct forms of harassment are a significant problem because often they are not recognized as sexual harassment; the conduct is thought of as just "special" attention to a "special" student or group of students. Also, people in academe often do not recognize that a power differential exists between faculty and students that can cause a student to engage in conduct (or to not object to conduct) because of fear of saying "no." The fear, of course, comes from the power of the professor to affect a student's educational progress (through grades or thesis approval, for example). Faculty must acknowledge this unequal status, recognize the power they have over students, and realize that consent may not exist legally in many situations. Also, even if consent is given, the student actually may not welcome the conduct, which is the legally determining factor. Some schools, recognizing the difficulties involved in relations between faculty and students, have instituted outright bans on romantic or sexual relationships between faculty and students.

There are other forms of sexual harassment that occur at higher education institutions. These can occur through acts such as leering or staring at students; using sexually specific or other inappropriate language in jokes or comments; acting or commenting that a gender

should not be in a particular discipline (e.g., "women shouldn't study physics, chemistry, etc."); or unsolicited touching, including hugging and patting on the shoulder.

The solution is to have and enforce sexual harassment policies and procedures that educate and discipline faculty, staff, administrators, and students. This policy must recognize, in form and in practice, the right of a student to say "no" to unwanted conduct or attention without fear of reprisal. The policy must also address the issue of "consensual" relationships between faculty and students.

Student—Student Issues

The higher education institution and its administrators can be liable for failure to protect students from sexual harassment by other students. Colleges and universities must develop policies and procedures to protect their students from harassment by other students. Unfortunately, the attitude that "boys will be boys" is still all too common and therefore complaints are not taken seriously. As students enter a higher education institution, they should be informed about sexual harassment and how to deal with harassing situations. A clear statement that sexual harassment will not be tolerated should be communicated to all students. The office of students affairs, at most institutions, will handle the complaints by or about students. Great care must be taken to ensure there are policies, procedures, and trained personnel to deal appropriately with the students.

The student affairs office should be used in the resolution of a complaint. In many cases, the office has sophisticated alternative dispute resolution mechanisms, ombudsmen, counseling, and other resources that are designed to deal with many types of situations. Often in student harassment cases, questions of discipline or dismissal will arise. Care should be taken to follow established school procedures for discipline of students. *Ad hoc* disciplinary procedures for students accused of sexual harassment are inadvisable—it is better to use the existing mechanisms for dealing with discipline. Investigators and triers of fact should be trained in sexual harassment issues.

In student harassment cases, allegations may arise involving sexual assault. In such cases, care should be taken to comply with the Higher Education Amendments of 1992, which require colleges and universities that participate in:

> any one of a large number of federal student aid programs to have in their procedures for on-campus disciplinary actions in cases of alleged sexual assault a 'clear statement' that: (a) The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and (b) Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.[2]

While student discipline is one possible resolution of a complaint of student-to-student harassment, other remedies or resolutions may be appropriate in particular cases. Consequently, the grievance officer should use student affairs resources as appropriate but maintain overall jurisdiction to ensure a complete review and appropriate resolution of the claim.

Examples of Sexual Harassment

When dealing with sexual harassment allegations, administrators must know how to examine the facts, apply definitions of sexual harassment to the conduct, and determine if the situation constitutes harassment. The following examples are intended to be illustrative of the range or continuum of conduct that can constitute sexual harassment. A single or isolated incident might not be harassment (such as a demeaning comment). Nevertheless, an administrator should be able to identify all harassing conduct and discourage *all* behavior that falls on the continuum. If an administrator can stop the conduct in its early stages, he or she likely will avoid lawsuits.

In the examples, "coworker" means someone who works at the same business or organization and who does not have authority over the harassed. "Supervisor" means someone with authority over the harassed. "Institution" means the employing organization with the power to discipline and to terminate employees and students.

While the majority of sexual harassment cases involve a man harassing a woman, there are many examples of female-to-male harassment and also same-sex harassment.[3] Everything that is said in this book regarding male-to-female harassment also applies to female-to-male and same-sex harassment. All sexual harassment, regardless of the perpetrator's or victim's gender, is equally disruptive to a person's job performance or educational pursuits and is illegal.

Dates

A single request by a coworker for a date made in a usual manner and context in the workplace is not sexual harassment. A single or isolated event has not been considered by courts as severe or pervasive enough to constitute sexual harassment (unless in the *quid pro quo* situation of supervisor to subordinate or faculty to student).[4]

Requesting dates after expressed or implied denial, however, can be sexual harassment if, for example, the pervasiveness of the requests interferes with a reasonable person's ability to perform his or her job. Express denial in this context is the use of written or spoken words to say no. Implied denial occurs through acts of the harassed, such as ignoring the request or postponing a response. The human resources practitioner should encourage employees to communicate denials expressly and clearly and to understand that "no means no." The sample form in Appendix C, "Advice Regarding Sexual Harassment," can assist in that process.

A request by a supervisor of an employee (one who is directly or indirectly subject to the supervisor's authority) is different from requests between coworkers. Dates between supervisors and employees can quickly fall into the *quid pro quo* category of harassment. If any connection exists between the request for the date and a term or condition of employment, harassment may have occurred. The obvious situation of *quid pro quo* harassment in this context is "you get the promotion if you go to dinner with me..." But what about patterns of behavior that indicate those who date the boss are more likely to get raises (promotions, job benefits)? This too is harassment if the reasonable person would believe that he or she must comply to receive the benefits that others receive.

Quid pro quo harassment

Requesting sexual favors in exchange for promotion or other benefits is *quid pro quo* harassment. Any connection, whether explicit or implicit, between grades or other evaluations, job benefits, performance reviews, or promotions and sexual conduct, is sexual harassment.

An obvious example is a supervisor asking an employee to have sex with him or her in exchange for a promotion. But this type of harassment also can occur in more subtle forms. For example, conducting a job evaluation process or a performance review at a dinner in a private setting can be harassment.

The solution for these situations is to have and to enforce clear policies and practices that allow someone to say no to a request for such conduct without fear of reprisal.

Dress codes

Imposing sexually provocative or suggestive dress codes on employees is sexual harassment. For example, a supervisor who insists that females wear very short skirts or transparent blouses is committing sexual harassment.[5] Recently, the governor of California approved a state bill making it illegal "for an employer to require female employees to wear dresses or skirts, except for those required to wear uniforms or costumes."[6] Dress standards may be imposed, however, so long as such standards reasonably relate to the job and treat men and women in a reasonably equal manner. That does not mean that males and females must wear the same clothes, but that the same workplace-related standard be applied to both. For example, a standard that says all employees will wear professional attire is reasonable.

Nonconsensual physical contact

Unconsented physical contact of a sexual nature is sexual harassment. An issue that arises is whether there can be touching or hugging in the workplace or in the classroom. The general rule and practice should be: do not touch without permission whether the touching is coworker to coworker, between supervisor and subordinate, or faculty to student. Remember that the courts will look at this from the perspective of the reasonable victim; just because one person enjoys touching does not mean that the other person enjoys being touched.

The unconsented and intentional touching of the body of another person is the tort of battery as well as harassment. Examples of this tort include unconsented acts such as touching of buttocks or breast or placing an arm around a coworker.

"Consent" in this context means agreeing in an express or implied manner to wanted conduct. Express agreements are always the best and safest—a person can just ask if the contact is all right, as long as he or she keeps power differences in mind. Implied consent derives from the conduct of people and so actions such as handshakes or pats on the shoulder in a professional manner are not sexual harassment because it commonly occurs and is accepted.

Unwelcome physical contact or sexual acts

Even though a person voluntarily participates in or agrees to sexual acts, those acts may constitute sexual harassment. This conclusion is reached because the legal standard applied is whether the conduct is welcome or wanted, not whether it is permitted.[7] As stated previously, this standard is critical in relationships between supervisors and employees and between faculty and students because of power differentials that make saying no difficult. Another problem situation is one in which a relationship began as a welcome one and later becomes unwelcome. Persistent attempts to continue the relationship are harassment.

The solution to these situations is to have a policy and practice that gives a means of saying no to requested conduct without repercussions and with ready remedy if repercussions do occur. This policy is especially important when the request is made by a supervisor or faculty member—the employee or student must be free to say no. In the Supreme Court case *Meritor Savings Bank v. Vinson*, a female plaintiff had engaged in numerous sexual acts with her supervisor. Later, she prevailed in the sexual harassment lawsuit because, even though she consented, she did not want or welcome the acts.[8] This court case illustrates the absolute necessity for proper policy and practices.

Preferential treatment of consenting subordinates

Treating subordinates who consent to sexual requests is harassment toward the subordinates who do *not* consent. For example, a manager of a hotel and lounge gave promotions, preferred shifts, and pay increases to a woman who consented to have sex with him. The woman who did not consent was given the worst shifts and denied promotion even though the evidence was uncontested that she was reasonably qualified. A court held that this situation was sexual harassment and awarded damages for lost wages, attorney's fees, and punitive damages.[9]

The EEOC rules specifically state that: "Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful discrimination against other persons who were qualified but denied the employment opportunity or benefit."[10] This statement creates an expanded scope of potential liability. Women or men can prevail in an unlawful discrimination suit when (1) they did not agree to or were not involved in the

sexual conduct; (2) they were denied promotion for which they reasonably were qualified; and (3) the promotion was given to the person who was involved in the sexual conduct.

Hostile environment

Public displays of nude or seminude pinups, as well as demeaning or offensive photos, cartoons, and graffiti in the workplace are all examples of harassment that fall within the hostile environment category and must be prohibited in the workplace. Again, remember that these conditions must be viewed from the perspective of the reasonable victim and not from whether an administrator, or even a majority of a school's employees, like the photos or cartoons.

Lewd or vulgar comments and sexually oriented jokes

Administrators must determine when jokes and comments are inappropriate. A pattern or repetition of sexist, demeaning, or derogatory jokes or comments is harassment. And remember that these jokes and comments should be viewed from the perspective of the victim.

A single joke or comment generally is not sexual harassment. This conclusion, however, does not mean that an administrator should allow or ignore such singular incidents. Stopping potential harassment in these early stages is essential for creating an environment that is harassment free.

The legal basis for liability in sexual harassment cases is the same as that for race discrimination or harassment. Therefore, an analogy to racist jokes can assist in determining the appropriateness of jokes: racist jokes are offensive, inappropriate, and racial harassment. Sexist jokes or sex jokes demeaning to women or men also are offensive, inappropriate, and sexual harassment.

Unwelcome comments on appearance

Unwelcome comments on appearance that are gender based, such as "Wow, you sure look sexy today in that dress," likely are sexual harassment. But what about the more subtle comment such as "nice dress"? No categorical answer exists since the comment's offensiveness depends on the relationship of the parties and the context of the comment. Human resources professionals should communicate to all institutional employees that, when in doubt, they should keep comments to themselves.

Patronizing terms or labels

Patronizing or demeaning terms such as "sweetie," "honey," or "babe" can be evidence of sexual harassment in the workplace. A single comment almost certainly is not actionable sexual harassment by itself. Nevertheless, a strong effort should be made to discourage such practices and to educate people to understand that these labels are inappropriate.

Leering or ogling

While terms such as leering and ogling are often mentioned in sexual harassment policies, it is difficult to define precisely when a glance becomes a stare, and a stare becomes sexual harassment. To look at others is not the problem—harassment comes into play when the *manner* of looking is inappropriate. An employee should look at all other employees, regardless of sex, in the same professional manner in the workplace. If conduct is questionable, that conduct should stop.

Equal treatment in the workplace

Since sexual harassment derives from discrimination laws, no clear line of distinction exists between sexual harassment and other forms of illegal discrimination. Nevertheless, courts have ruled that sexual harassment includes differences in treatment based on gender. For example, in a trial court case, a liability occurred when police officers intentionally responded more slowly to the assistance calls of a female officer than to calls of male officers in order to force her to resign. In another instance, line-level supervisors failed to provide a desk and computer to a saleswoman even though these were essential to her job and were provided to all male employees. Both of these situations are sexual harassment.

Physical interference

Conduct such as blocking access to a work area or passage through corridors, when such conduct is directed at someone based on gender, is sexual harassment. For example, a supervisor was liable for sexual harassment because he physically blocked a female employee's path through a door and then twisted her arm. A court held that this

conduct was hostile and demeaning based on gender that interferes with her job and is sexual harassment.[11]

Verbal harassment

To state or indicate that a person is not tough enough to do a job is sexual harassment. For example, a woman was subjected to repeated verbal harassment by males whom she supervised after her promotion to line supervisor. The comments indicated that a woman should not be supervising men because women were not tough enough. The men stated they would not submit to her authority.[12] This situation is harassment by the employees and the company also may be liable for failure to have and to use effective policies and procedures to stop this type of situation promptly.

Observing harassment of others

A person does not have to be the target of sexual harassment to be sexually harassed. The harassment of others can be so offensive, demeaning, or disruptive as to constitute a hostile work environment, even though not specifically directed at the observer.

For example, sexual harassment of a surgical nurse occurred when a doctor engaged in ongoing and extensive harassment of other nurses in the surgery facilities of the hospital. The court stated that this situation was a hostile work environment for the nurse who witnessed the harassment, even though the conduct was not directed specifically at her.[13]

Wrongful termination

An employer may not terminate a supervisor for attempting to stop the harassment of an employee. Although this situation does not fall within the definitions of sexual harassment, it *does* create liability based on sexual harassment law. Retaliation for exercising rights to stop sexual harassment is prohibited.

In a federal case, a man named Stuart was a supervisor of a woman named Pamela. And in turn, Stuart was supervised by a man named John. John continuously sexually harassed Pamela. Stuart attempted to stop the harassment by verbally confronting John on several occasions. John did not stop the harassment and ultimately arranged for Stuart's termination, even though Stuart had been an excellent em-

ployee. The court found that this conduct and termination violated sexual harassment protection for Stuart and the court allowed recovery for his wrongful termination.[14]

Third-party harassment

Institutions can be liable for harassment of employees and students from "third parties" (people outside of the institution). For example, employees who are subjected to a pattern of unwelcome lewd comments or sexual innuendos by vendors or visitors are being sexually harassed. This harassment is the same as any other except that control of conduct of third parties is more difficult. Therefore, policies must address these issues and must provide a means for employees to report and to have support in resolution of this harassment.

Liability also can occur for harassment of third parties by school employees. All of the *quid pro quo* and hostile environment harassment laws and tort definitions can apply when an employee harasses people such as vendors or visitors as long as the conduct is connected to the institution (commonly referred to as "within the scope of employment"). The school is legally responsible for the harassment by its employees when they are acting within the scope of employment.

Inaction

An institution that fails to act timely and reasonably to stop sexual harassment is liable for the harassment. In other words, even though a human resources practitioner for an institution is not doing the harassing, the practitioner and school may be liable for allowing the situation to occur, allowing it to continue, or failing to conduct a prompt and thorough investigation.

In a case mentioned previously, a maid at a hotel was harassed continually by her supervisor. When the maid complained to another supervisor about her harasser, that supervisor failed to take action to stop the harassment. Both of the supervisors and the hotel were found liable.[15]

Conclusion

While these examples highlight many instances of sexual harassment, every case is different. Administrators must examine the situation, analyze the facts, and determine if the conduct brought to their

attention falls under sexual harassment law. It is the administrator's duty to look at every situation—because allegations can turn into lawsuits.

Notes

1. For examples of trial court or agency cases concerning these issues see: "A Sexual Harassment Case to Test Academic Freedom" (Johnson), *The New York Times*, Wednesday, May 11, 1994, p. A13; "Professor Ousted for Lecture Gets Job Back" (Honan), *The New York Times*, September 17, 1994, p. 8; "Dispute Over Computer Messages: Free Speech or Sex Harassment" (Lewin), *The New York Times*, September 22, 1994, p. 1.
2. Section 486 (c)(B)(iv) of the Higher Education Amendments of 1992, Public Law 102-325.
3. *Wright v. Methodist Youth Service, Inc.*, 511 F.Supp. 307 (1981), in which the employment of a male was terminated for his refusal to consent to sexual acts requested by his male supervisor.
4. EEOC *Policy Guidance on Current Issues in Sexual Harassment*, Notice 915-050 (March, 1990).
5. *Barbetta v. Chemlawn Services Corp.*, 669 F. Supp. 569 (1987); *Dias v. Sky Chiefs Inc.*, 912 F.2d 1370 (1990).
6. California measure SB 1288, signed into law on September 11, 1994, as reported in *BNA Employee Relations Weekly*, 19 September, 1994.
7. *Meritor Savings Bank v. Vinson*, 477 US 57 (1986).
8. Ibid.
9. *Priest v. Rotary*, 634 F. Supp. 571 (1986).
10. 29 CFR 1604.1(g)
11. *McKinney v. Dole*, 765 F.2d 1129 (1985); *Bell v. Crackin' Good Bakeries, Inc.*, 777 F.2d 1497 (1985).
12. *Bell v. Crackin' Good Bakeries, Inc.*, supra.
13. *Fisher v. San Pedro Peninsula Hospital*, 214 Cal.App.3d 590 (1989).
14. *Flait v. North American Watch Corp.*, 3 Cal.App.4th 423 (1992).
15. *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (1989).

Chapter 3

What Is the Liability of the Administrator and Institution?

Sexual harassment is terribly damaging for the victim as well as the campus. Schools need to work to prevent incidents from occurring, but they also need to guard against lawsuits. Administrators need to know how to identify who is liable for harassing conduct; they also need to address the consequences of that liability.

Who is Liable?

Who will be liable if harassment *does* occur? Generally, the harasser, an administrator who fails to act, and an institution that fails to act all face possible liability.

The harasser

If the harasser is found liable, the harasser is responsible for damages to the harassed. Quite simply, if a person sexually harasses someone, the harasser is liable for the emotional, economic, and physical injury that he or she has caused. This liability can fall under sexual harassment laws, tort laws, and, in egregious cases, criminal prosecution. The harasser will be liable for damages and costs and possibly for punitive damages.

The administrator

An administrator, even though not the sexual harasser, can be liable for harassment if he or she fails to take prompt, equitable, and effective action to stop the conduct or to correct the situation. He or she also can become liable independently for retaliating against harassment complaints or for covering up the harassment.

The institution

If an institution does not have and enforce a sexual harassment policy for all campus members, including third parties, it can be held liable.

Failure to have an effective policy. A school can be liable for failure to establish effective policies and reasonably accessible procedures that allow the victim an opportunity for termination of the harassment and that provide for appropriate and prompt action regarding the harasser. An ineffective or nonexistent policy is treated as harassment in itself because lack of an effective policy allows the harassment to occur or to continue without consequence.

Failure to take effective action to stop harassment. A school is directly liable for the harassment among coworkers or between faculty and students if the institution knew of the harassment or should have known of the harassment and failed to take immediate and reasonable action to correct the situation. The institution and its administration have an affirmative duty to know about harassment that occurs and to take timely and appropriate corrective action. This liability is just one more reason why the adoption and use of effective policies and procedures is so critical.

Harassment by supervisors. As an employer, the school also is liable for the harassment by its supervisors. An employer is responsible for the acts of its supervisory employees regardless of whether the specific acts complained of were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. This liability is based on "agency theory" that says the employer has empowered its supervisors to act for it and, therefore, the employer is liable for those actions. This liability quite likely also will exist for actions of faculty in relationship to students; an institu-

tion hires the faculty and empowers them, so the school will bear the consequences of their actions. Employer's liability under this concept particularly occurs in *quid pro quo* harassment. For example, if a supervisor, empowered by the institution to determine promotions, offers a promotion in exchange for sex, the school is liable along with the supervisor for sexual harassment.

Third-party harassment. An institution also is liable for third-party harassment (harassment by nonemployees) when the employer knew or should have known of the harassment and failed to take immediate and appropriate action to stop the harassing conduct.

As mentioned previously, a lawsuit recently was filed in such a case requesting $2.2 million. A female sales representative was harassed by a primary customer of the company. When she complained to the company about the harassment, the company terminated her rather than incurring the risk of losing the customer.[1]

How Much Is It Going to Cost?

When sexual harassment is discovered, several possible consequences exist including actual damages, fees and costs, punitive damages, and criminal action. The bottom line is that sexual harassment can cost a higher education institution plenty!

Actual damages

Actual damages are those that compensate the plaintiff for actual losses. This compensation can be for physical or emotional injury, lost wages (past and future), medical bills, and incurred costs (e.g., search for a new job). Damages can reach hundreds of thousands of dollars in instances of extensive harassment—actual damages have been awarded in excess of $2 million.

Attorneys' fees and court costs

In addition to actual damages, a school can be required to pay the harassed person's costs for attorney and court expenses. The school will also pay its own fees and costs. These fees can quickly add up to tens of thousands of dollars. Additionally, the costs of defending allegations includes thousands of dollars in human resources spent in

meetings, investigations, depositions, and review by upper-level management.

Punitive damages

Punitive damages are awarded to the victim to punish the harasser for his or her conduct and to discourage future conduct. These damages generally are left to the discretion of the jury (or judge if no jury) and under the basic instruction of "make it hurt so that it will not occur again." The judge or jury is allowed to see evidence of the wealth of the liable party or parties in order to carry out that instruction. These damages are limited by some federal and state discrimination laws and often vary according to the wealth of those liable. That does not, however, ameliorate the potential financial cost because the limitations are not small—up to $300,000 in punitive damages under federal law—there are no limitations under some state laws, and damages generally are not limited in tort cases. These damages can exceed a million dollars quickly. In a recent California case, the jury awarded 7.1 million dollars against a law firm.[2]

Criminal consequences

Generally there are no criminal consequences of sexual harassment. Some forms of harassment, however, also are crimes for which a person can be fined and, in severe cases, imprisoned. Examples of these are assault, battery, sexual battery, rape, and stalking (under some state antistalking laws).

So, how much will it cost those liable for damages and fees for all of these possible consequences? In a "small" case (i.e., limited time of harassment, no physical contact) the dollar cost could range from $5,000 to $15,000. In "large" cases (i.e., class actions because of multiple victims; wrongful termination; physical contact such as battery or rape), the costs and attorneys' fees could quickly rise to tens of thousands of dollars and the damages can readily exceed $1 million. And none of these amounts includes the lost productivity at the college or university from the effect of sexual harassment on employees.

Notes

1. "Harassment of Workers by 'Third Parties' Can Lead to Maze of Legal, Moral Issues," *The Wall Street Journal*, 26 October, 1992, p. B1.

2. *Weeks v. Baker & McKenzie*, Calif. SuperCt. No. 943043 (1994).

Chapter 4

Practices to Implement to Prevent Sexual Harassment

Prevention of sexual harassment must be a campus goal to preserve a productive atmosphere for students and staff and to avoid liability. Administrators must know how to implement practices to move toward that goal and understand how to handle harassment complaints.

What Can an Administrator Do?

Believe and advocate the prevention of sexual harassment

To prevent sexual harassment, the school's policies must highlight disapproval of harassment consistently and frequently. Human resources practitioners should communicate to all campus members that harassment is wrong, illegal, and will not be tolerated. Additionally, an administrator's own conduct, and the conduct of the highest officials of the institution, must be consistent with the sexual harassment policy. The best policies and procedures mean nothing if the actions of campus leaders reflect a casual attitude about sexual harassment.

Create and disseminate a policy that prohibits harassment

The law is clear that the failure to have and to enforce an effective policy is a basis for liability. Establish a policy, publicize it, and use it! It is important that all administrators—especially human resources professionals—read and understand the policy.

A policy that is placed in a drawer or on a shelf and is brought out for an infrequent discipline is the same as no policy. People on-campus at all levels need to know the policy and the consequences of violation of that policy. Be certain that each employee receives a copy of the policy. Post the policy in the workplace.

Establish an on-campus training program

An important strategy to effectively address sexual harassment is a campus program that trains all workers and students to recognize, report, and deal with sexual harassment. The training should encompass all constituencies—students, faculty, custodial staff, secretaries, security personnel, and other administrative staff. Workshops should be designed to address all members of the campus community (please see Appendix E for additional resources on training).

Objectives. The core objectives of each workshop should be that all participants can:

- Describe the institution policies and procedures for filing a sexual harassment complaint.
- Define the two types of sexual harassment and recognize sexual harassment incidents in case studies and scenarios relevant to their own environment.
- Describe the effects of sexual harassment from a legal, institutional, and moral perspective.
- Describe the federal and state laws prohibiting sexual harassment and understand the legal penalties for their violation.
- Identify a number of actions that they can take to prevent sexual harassment or remedy sexual harassment situations in their work environments.

Relevancy. The training programs must be relevant to the audience. The scenarios used for faculty will not be relevant to the cleaning staff or residential life staff. The literacy level of audiences must be taken into

consideration and every effort must be made to provide an atmosphere for comfortable interaction. An example of a school training program might include workshops for the following groups, which are designed specifically for their respective environments.

- ***Sexual harassment task force, investigators, top campus administration.*** Full day workshop with all of the objectives listed previously, plus an afternoon session on investigating internal sexual harassment complaints.
- ***Deans, directors, managerial staff.*** Three-hour workshop covering the core objectives with an additional hour designed to address supervisory responsibilities in preventing sexual harassment.
- ***Faculty, graduate teaching assistants.*** Special two-hour workshop concentrating on issues of hostile environment sexual harassment, academic freedom issues, and classroom sexual harassment scenarios.
- ***Residential life, student affairs staff.*** Two- to three-hour workshops dealing with issues such as student-to-student sexual harassment, hazing, and acquaintance rape.
- ***Classified staff, public safety, plant employees.*** Standard two-hour workshop emphasizing Title VII (workplace) issues. Offer these workshops during regular shift hours.
- ***Students.*** Student workshops and training is best accomplished in conjunction with student affairs staff. The training should be available to nontraditional and commuting students.

Workshops. The workshop in each case should open with an introduction by a high-level administrator who can state effectively the institution's commitment to the elimination of sexual harassment. Employees authorized to receive complaints (if they are not actually presenting the workshop) should be introduced. Workshop presenters should be experienced and should be prepared to encourage questions. Consider a team of presenters that includes both a man and a woman. The use of case studies to allow participants to apply what they learn to workplace situations relevant to them is critical. Participants often offer hypothetical situations that are not hypothetical at all—presenters must deal with these situations very carefully. Finally, the presenters should keep accurate attendance records, because the school may need, at some point, to show documentation of its training efforts.

Report discipline

Report to students and employees the discipline imposed for harassment. This report should include descriptions of the conduct for which discipline was imposed. This reporting is an effective harassment prevention technique because students and employees can see that as a victim they will receive help and as a harasser they will receive consequences. Protect confidentiality and the privacy of the harasser by not disclosing names in the report to the general work force and by attempting to limit identifying information.

Enforce the policy

Policy without application is effectively no policy. Follow the school's policy carefully and deal with acts of harassment consistently. One of the most certain ways to lose a sexual harassment suit is to adopt a policy and then to ignore it.

Campus officials should be certain in each and every case to retain careful, contemporaneous, and written records of the process of investigation and resolution. Appendix B, "Sexual Harassment Incident Report," contains a sample incident sheet with checks and dates for compliance with the institution's policy.

An administrator's legal obligation is to take action to stop harassment even if such action is not requested by the victim. If the victim states that "this is just to register a complaint or to make a record," an institution's official must still act. There is no such thing as a "noncomplaint" by which an employee states that "I don't really want to create a problem or to start a complaint procedure, I just want you to know that so-and-so is harassing me." If an administrator knows of harassment, he or she must take reasonable steps to stop it. This requirement exists even if the complaint is anonymous. All complaints should be documented carefully and thoroughly.

Administrators should pay attention to what is occurring on-campus. Under the law, they must be aware of sexual harassment. Ignorance is not a defense and will in fact be a basis for liability. One way to discover potential problems is to walk about and talk to campus employees about the climate of the institution. Another means to obtain information is to use (on a regular basis) a survey form such as the one provided in Appendix D. Conduct the survey and pay attention to employees' responses. If necessary, modify the school's policy for situations that are not being prevented and that are indicated on the form.

Warning: When a campus official learns of particular instances of harassment or of a climate of harassment, he or she must take action. A human resources practitioner should not use the survey form unless he or she is committed to correcting the harassment.

Take actions to stop the harassment

Administrators are obliged under the law to take action that likely will stop harassment and that will prevent future harassment. Reasonable actions will be determined by examining the seriousness of the offense and the likelihood that the remedy will end the harassment.[1] After determining that harassment has or is occurring, officials must decide what discipline will be effective and impose that discipline. It is clear that if administrators take discipline and the harassment does not stop, they must take further action. Discipline can include oral or written reprimands, suspension (with or without pay), transfer of the harasser, and expulsion or termination of the harasser.

In "milder" forms of harassment, such as infrequent jokes or demeaning comments, appropriate action may be a reprimand. In other instances, such as sexual battery, immediate suspension pending investigation and termination may be appropriate. Try to take the least severe action that will stop the harassment in order to decrease the likelihood of a wrongful termination action.

In certain situations, the harassing employee can propose an action plan to agree to specific steps that he or she will take to not engage in further acts of harassment. Administrators also could include that action plan as part of future performance reviews for the employee.

Institutional officials should maintain written records of all actions taken. These may help prove to a court at some later date that they were acting reasonably to stop and prevent harassment.

Actions to stop harassment cannot be at the expense of the victim. Harassment is to be remedied through actions targeted at the harasser, not at the victim. Therefore, do not try to correct the situation by means such as transferring the victim or changing the shifts of the victim.

Guidelines on Investigations

Some guidelines for administrators and appointed investigator(s) to follow are:

- Do not treat complaints of sexual harassment as unfounded or frivolous. Investigate, document, and make determinations each and every time knowledge of harassment or allegations of harassment occur.
- Know the school's policies and procedures and follow them correctly and carefully. Use a form for reporting and investigating a complaint, such as the sample form in Appendix B, so that in each case the procedural steps are followed.
- Maintain complete written records of all interviews, investigations, and determinations.
- Complete the investigation as promptly as reasonably possible. Do not allow the investigation itself to become harassment by tedious roadblocks discouraging for and demoralizing to victims.
- Balance the need for promptness with a thoroughness that is fair to all parties.
- Take immediate action. For example, it is not necessary to investigate to determine that nude posters, offensive cartoons, or sexist jokes are harassment. Take action immediately to stop that conduct.

Choose the investigator

The selection of the person or people who will investigate and impose discipline is critical. Failure to investigate reasonably and to complete such investigations within a reasonable time will create liability for the institution and for the investigator. The investigator must be capable of following the school's policy and the preceding guidelines. Some things to think about in the selection process are:

- Should the investigator be a man or a woman?
- Should the investigator be a human resources administrator if available?
- Should there be a team of two or more investigators?
- Should the investigator be an attorney?

The answers to these questions depend on the nature and extent of the allegations. Remember that the person selected will be reflective of the institution. The investigator may be a witness in a lawsuit and must be capable of presenting his or her investigation to a jury in a professional manner.

The person who conducts the investigation must be trained thoroughly and should follow the suggestions provided in the next sec-

tion. Be certain that the person knows the full range of conduct that constitutes sexual harassment and is familiar with school policy and procedures.

Consider a two-person team to do the investigation. This team will allow for evidence of neutrality, better notes and perceptions, enhanced cumulative recollection in subsequent testimony, and increased assurances of compliance with procedures.

Follow investigative procedures

The investigator should:

- Find out as many details as possible about the allegations by talking first to the complaining party and asking who, what, when, where, and for the names of witnesses.
- Look for corroborating evidence such as journals, calendar entries, or receipts.
- Maintain records contemporaneously with the investigation and date every interview.
- Support the complainant without promising any result other than a thorough investigation, and encourage the complainant to inform him or her completely and truthfully about what occurred and about what the complainant believes is reasonably necessary to correct the situation.
- Advise the complainant to tell all that he or she knows in a narrative format.
- Use open-ended questions.
- Take careful notes and show those notes to the complainant, then ask if there is anything to modify or if he or she wishes to expand or elaborate on any area.
- Remind the complainant that the school is committed to a policy of confidentiality (to the extent possible within the need for investigation and resolution of the situation) in all complainants and that the school will do all it reasonably can to protect the complainant from reprisal or retribution. The investigator must not make promises that cannot be kept such as absolute confidentiality; because, if a lawsuit or administrative hearing occurs, the names of the parties and witnesses must be disclosed.
- Ask the complainant not to discuss the matter with other possible witnesses pending the investigation to avoid creating a bias in those witnesses.

- Talk to the alleged harasser to learn that person's version of the occurrence or occurrences, applying all of the preceding suggestions.
- Confirm that the accused knows about the school's sexual harassment policy and about legal rights including the right to a hearing, to present witnesses and other evidence, and to be informed about the specific charges.
- Talk to witnesses, again using the previous suggestions. The school's policy and practice should protect witnesses from retaliation or retribution for participating in the process.
- Remain objective in the report—the investigator should not include opinions, except for the conclusions noted in the next section. If an investigator is assessing the credibility of a witness, he or she can report the objective facts that cause concern (e.g., not maintaining eye contact, changing the story, perspiring).

Reach a conclusion

An investigator must reach a conclusion based on the investigation. The failure to do so is strong evidence of failure to act reasonably. There are only three possible conclusions:

- the harassment occurred;
- the harassment did not occur; or
- sufficient information cannot be obtained to make a determination about the harassment.

Warning: When in doubt about an investigation, conclusions, or discipline (particularly in event of intended termination), obtain the assistance of the school's counsel.

Conclusion

While thoroughly investigating allegations of sexual harassment and implementing proper practices, an administrator can most effectively stop harassment before it starts with a proper sexual harassment policy that delineates conduct that is prohibited, the range of discipline, and to whom the policy applies.

Notes

1. *Ellison v. Brady*, 924 F.2d 872 (1991); *Intlekofer v. Turnage*, 973 F.2d 773 (1992).

Chapter 5

Important Elements for a Policy

Requirements for an Effective Policy

One of the most critical actions for an administrator to take is the development and use of an effective sexual harassment policy. Building consensus during the adoption of school regulations and procedures is critical. Try to get all constituencies involved in the drafting; encourage discussion; use this time as an opportunity to educate about harassment. Faculty must agree with the school regulations and recognize that harassment should be dealt with as a serious breach of trust and a violation of law.

Administrators should examine each of the following considerations before preparation or modification of the school's policies and procedures. In this chapter, "policies" means the statements of prohibited or required conduct and the consequences or discipline for noncompliance. "Procedures" means the methods of enforcing the school regulations and the steps of enforcement.

Tailor regulations to the institutional environment

Acts of sexual harassment will vary depending on the nature of the higher education institution (e.g., the potential acts of harassment in a community college differ from the potential harassment in a university medical center). Therefore, to have an effective policy, look at the potential harassment and include that potential as part of the prohibitions listed in school regulations. Look at:

- contact among staff and with supervisors
- student-faculty contact and relationships
- gender mix
- contact of institution staff with third parties (students, vendors, clients, visitors, and suppliers)
- past instances of harassment
- the environment in which school employees operate. (Are there improper posters on the wall? Are there required dress codes that are gender based and inappropriate? Are there sexual jokes being told?)
- any collective bargaining agreements that may control discipline in instances of harassment. (Is the institution's policy consistent with those agreements?)

Additionally, survey the campus to determine the perspective of the employees. Since, as stated previously, administrators can be liable for what they do not know if they reasonably should have known, administrators need to find out about attitudes and instances of harassment and about previously unreported or unresolved events. A sample form for such a survey is in Appendix D and can be used to periodically revisit the issue. Remember that if an administrator does have the information, he or she must correct the problem. Do not survey the campus unless the institution is prepared to allocate resources necessary to alleviate any situations discovered.

All complaints of harassment must be resolved without retaliation or retribution to the person filing the complaint or to the people who are witnesses. To attempt to ensure this end, include in the school's policy prohibitions against such retaliation.

Identify campus members who fall under the policy

The policy must apply to everyone who is within the campus including management, agents, supervisors, staff, students, and faculty.

Additionally, a commonly overlooked harassment is that by third parties (people outside of the institution, such as vendors or suppliers). Also, be certain that campus employees are not harassing people outside of the school such as visitors or clients. Be certain that the policy includes all of these potential harassers and victims and provides a means to attempt to resolve the harassment.

Delineate the nature and range of discipline

In the event of determinations of harassment, the actions taken by an administrator must be sufficient to prevent further harassment. If the discipline imposed does not stop the harassment, that discipline is insufficient legally and the administrator will be liable. Therefore, institution policy should include a range of possible disciplines from reprimand to termination. Also, administrators should retain ultimate discretion to have the final determination and application of discipline within the range provided in the school policy. (Note how Section D in the sample policy in Appendix A accomplishes this retention of discretion.)

Be cautious about allowing the harasser to resign without determination of the harassment. This situation provides absolutely no redress for the victim and may cause the administrator liability in the future. This situation is particularly critical with faculty who are allowed to resign and then go to another institution where the behavior is repeated. The administrator may be liable to the victims at that new school.

Describe prohibited conduct

This description must include general statements of the nature of prohibited conduct and include specific examples of conduct that constitutes harassment and that have been tailored to the school. Many policies are ineffective because they contain only a general, unclear statement about sexual harassment. Be specific and clear so that people can know what is prohibited! An ambiguous policy is just something for attorneys to fight about after administrators are sued.

Policies sometimes include the EEOC definition (see page 4). That definition alone, however, is not adequate for a policy because it is not understandable without additional information or explanation.

Regularly reexamine the policy and procedures

See if the institution's policy is working, particularly after the resolution of an incident. Ask people involved if the incident was resolved satisfactorily. Talk to people who have gone through the process as a complainant or respondent and determine any changes that are needed.

Make the procedures as easy as possible for all concerned

Victims must be encouraged to come forward with complaints. A common problem in procedures is administrative and attitudinal blocks. In other words, multiple levels of reporting and review exist in some institutions so that each person in the management hierarchy protects himself or herself, which results in delays and a burdensome process, all without resolution or cessation of the harassment.

For example, if a university that took a person through protracted written reports and hearings, only to later decide that it was not the correct procedure and asked the victim to start all over again after several months, then the result is the continued victimization of the harassed and liability for the school.

Establish specific time frames for actions

Because harassment complaints must be resolved in a timely manner, the school's policy should provide a time for completion of the process. Be certain to retain some flexibility, however, if that deadline cannot be met (e.g., employee or witness on vacation or ill). Attempt to move the process quickly, but not at the sacrifice of thoroughness and fairness.

Provide for more than one contact and assistance person

The victim needs the opportunity to contact someone with whom he or she reasonably can feel safe. Be certain to have more than one person designated to receive complaints to avoid a situation where an employee is faced with complaining to the person (or to a close associate of the person) who is the subject of the complaint. The victim must have options other than filing a complaint with his or her direct supervisor. That supervisor may be the harasser or may be in opposition to complaints of sexual harassment. Try to create a panel of people, allowing students and employees some voice in selecting membership,

perhaps by letting each constituent group select some portion of the contact group. Be certain to provide education to these contact people so that they can recognize sexual harassment in all of its myriad forms. Also, select people who can, and will, understand the emotional effects of harassment and of being engaged in the complaint process.

Recognize the right for a complete investigation

Do not forget that the alleged harasser also is entitled to a fair and timely process and reasonable resolution of the complaint. Legally, the alleged harasser has the right to notice of the complaint; the school also must provide for a thorough and independent investigation. The procedures in the policy in Appendix A provide for this resolution.

Follow-up to be certain the harassment has stopped

The school's policy should provide that, after a complaint of sexual harassment has been resolved, the parties will be contacted at a later date to be certain that no further action is necessary. At that later time, check for acts of retribution or retaliation toward the victim for filing the complaint.

Provide confidentiality to the fullest extent possible

Do not compound a problem of harassment by adding a tort for invasion of privacy. A victim or alleged harasser has the right to confidentiality in relationship to the work force in general. Therefore, an institution's policy and actions should protect privacy and not disclose names other than necessary for a thorough investigation (for example, it is necessary to disclose the identities of the parties to talk with witnesses).

Warning: Always be aware that a point might arrive when names must be disclosed (such as in lawsuits or administrative hearings). Use extreme caution in making promises of confidentiality that cannot be kept.

Conclusion

Sexual harassment is against the law. It harms all members of the campus community—staff, faculty, and students alike. Colleges and universities must state clearly their intolerance of sexual harassment within or connected to the institution.

Institutions of higher learning strive to accommodate a diverse work force and maintain a quality workplace while sustaining a nurturing educational environment to help every member of the institution reach their full potential. This juggling act is difficult to accomplish under the best circumstances—it is impossible with the taint of harassment on-campus.

In order to prevent sexual harassment at a college or university, administrators must do more than hope the school has good intentions—they must take action.

Officials should tailor a policy to the institutional environment, enforce that policy vigilantly, and if allegations arise, investigate the incident and state a clear conclusion. Anything less than these steps, and the human resources practitioner is hurting—not helping—the campus community.

Appendix A

Sexual Harassment Policy

The next few pages contain a sample sexual harassment policy. This sample is intended as a model to provoke thinking and discussion and is not intended for adoption without modification.

This sample policy must be tailored to fit the particular characteristics of the campus. Be certain that the policy is consistent with collective bargaining agreements and other employee contracts. Examine other related policies such as student, faculty, or staff discipline policies. Determine which policy to use in which situations.

This sample policy provides for an informal resolution of complaints by a contact person. It also provides for formal resolution if informal resolution is not successful.

Review the school's policy periodically (at least annually) to be certain that it continues to meet institutional needs. Examine the campus workplace to determine the potential for harassment and review any complaints or instances of sexual harassment that have occurred to see if these were resolved appropriately. The "Sexual Harassment Survey" form in Appendix D can assist in this process.

SEXUAL HARASSMENT POLICY

To our students, faculty, administrators, and staff:

A. Statement of philosophy. [Institution name] strives to recognize human dignity and therefore does not tolerate sexual harassment or any other type of harassment within or connected to this institution. Harassment is illegal and unfairly interferes with the opportunity for all persons, regardless of gender, to have a comfortable and productive education and work environment. We are committed to taking all reasonable steps to prevent sexual harassment and to discipline those who do harass.

We believe that a person is entitled to say "no" to unwanted conduct based on sex without the fear of reprisal or retribution from any person, including from faculty and supervisors.

B. Statement of prohibited conduct. Sexual harassment is a form of discrimination based on sex because the harasser treats a member, or members, of one sex differently from members of the opposite sex or engages in conduct that is based on the difference in sex. Sexual harassment is any threatening, demeaning, or offensive conduct or situation that unreasonably interferes with a person's ability to perform his or her job or educational pursuits and is based on the sex of that person. Sexual harassment is any conduct or situation that, on the basis of sex, makes it more difficult for a reasonable person to do a job or receive his or her education. This harassment includes, and is not limited to:

- requests for dates with a student by faculty when that student is in his or her class or is his or her advisee
- persistent requests for a date
- unwelcome requests for sexual favors or acts
- continued expression of sexual interest after being informed that the interest is unwelcome
- unconsented or unwelcome physical contact
- nude or seminude posters, photos, cartoons, or graffiti in the workplace or public place that are demeaning or offensive
- unwelcome visual contact, such as leering or staring at another person
- comments or statements that are demeaning, humiliating, suggestive, insulting, vulgar, or lewd
- harassment by nonemployees, such as visitors or vendors
- failure to provide assistance that is usual under same or similar circumstances

- retaliation, retribution, or reprisals in any form or manner for complaints about harassment or for requests that harassing conduct stop or for assisting a person with a complaint of harassment
- physical interference with job performance
- preferential treatment or promise of preferential treatment for submitting to sexual conduct.

The list is not intended to be nor should be construed as all inclusive of prohibited acts under this policy. Any of the prohibited conduct described here is sexual harassment of anyone at whom it is directed or who is otherwise subjected to it. Each incident of harassment contributes to a general atmosphere in which everyone suffers the consequences. Sexually oriented acts and sex-based conduct have no legitimate basis at a higher education institution; accordingly, the person who engages in such will be made to bear the full responsibility for such unlawful conduct.

C. Scope of policy. This policy applies to all administrators, faculty, staff, agents, and students at all times and places in any connection with this institution. This policy applies for and to those who do business here. Compliance with this policy is a term and condition of employment with this institution. The terms "employee" or "employment" include, but are not limited to, faculty, staff, administrators, agents, and contractors.

D. Discipline. In the event of the determination of harassment, discipline may include, but is not limited to, any of the following:

- oral reprimand
- written reprimand
- suspension (with or without pay)
- termination or expulsion.

The final discipline shall be determined exclusively by [institutional designee] of this institution. A determination of sexual harassment under this policy shall be placed in the harasser's personnel file.

Harassment of employees or students by third parties is not acceptable. [Institution name] will do whatever it reasonably can to stop such harassment.

Harassment also is a violation of state and federal laws and the harasser may be charged by appropriate agencies.

E. Contact persons. Contact persons are selected by you and your peers [on an annual basis] and are trained in identifying sexual harassment and handling sexual harassment complaints. They are available to assist you in identifying and stopping sexual harassment.

F. Procedures. The purposes of these procedures are to provide a prompt and fair resolution of problems and to preserve the due process rights of all involved, including the rights to receive notice of complaints and to have an opportunity for an impartial investigation. These procedures also are created to provide for discipline of violators of this policy. However, administration may take any immediate action to stop harassment if reasonably necessary, and is not limited to the process provided herein.

In the event that you believe that sexual harassment has or is occurring, you are encouraged to communicate clearly, preferably in writing, to the harasser and state that the conduct is not acceptable. You also are encouraged to maintain careful written records of the harassment and to continue to maintain current records throughout the process.

Complaints of sexual harassment that are in violation of this policy will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated. Anyone who has observed sexual harassment should report it to a contact person. A complaint is not limited to someone who is the direct target of the harassment.

If the conduct is not stopped after your communication, or if you wish not to make the initial contact with the harasser, you may file a "Sexual Harassment Incident Report" with any person designated as a contact person. The names and locations of these people will be posted throughout the workplace. This contact person will assist you with your "Sexual Harassment Incident Report" and with the process. The contact person also will attempt to resolve the matter at this stage if you wish.

If the complaint is not resolved by the efforts of the contact person, a designated investigator(s) will complete an investigation, make a determination of whether sexual harassment has occurred, and recommend discipline if harassment is found. The parties to the complaint will be provided written notice of all determinations and recommendations and receive copies of any documents received by investigators.

The [institutional designee] shall have the final and ultimate determinations of discipline based primarily upon the investigations and recommendations deriving from the outlined process.

All reasonable attempts will be made to complete this entire process in not more than 30 days from the date of the filing of a "Sexual Harassment Incident Report."

On or about 30 days after the completion of the above process, or any part thereof, [investigator or institutional designee] will contact each of the parties. The purpose of this follow-up is to discourage any further harassment, retaliation, or retribution that may occur or has occurred. In all cases, a "Sexual Harassment Incident Report" will be completed.

G. Confidentiality and prohibition of retaliation. Confidentiality shall be maintained to the greatest extent possible within the requirements of conducting reasonable investigations. Only those who have an immediate need to know will or may find out the identity of the parties. Any retaliation against a complainant or witnesses is prohibited specifically by this policy and the person(s) will be disciplined.

H. Training. We will conduct [at least annual, more frequent is preferable] training sessions for all employees, agents, supervisors, and administrators regarding this policy and regarding prevention of sexual harassment. The intent of this training is to produce an institution that is free of harassment and that provides the opportunity for everyone to reach full potential in the performance of his or her assigned job or educational pursuits.

A copy of this sexual harassment policy will be provided to every employee upon employment and will be read and acknowledged in writing at that time. Copies of this policy also will be posted at accessible places in the workplace.

I have received, read, and understood a copy of the sexual harassment policy. I understand that compliance with each and every provision of this policy is a term and condition of my employment.

Signed: _____

Date: _____

*Original of this page shall be placed in employee's personnel file.

*Copy of this page and of this policy shall be given to employee.

Appendix B

Sexual Harassment Incident Form

Please note that the following form is intended as a format and an example. Tailor it to fit the particular nature of the campus and to comply with the procedures and the policy that is actually adopted.

The purpose of this report form is to maintain a record of investigations and discipline. It also provides a checklist for compliance with a school's policy. Be certain that this form is completed in a timely, accurate, and thorough manner.

Always investigate any complaint or allegation of sexual harassment. Even if the complaining party wishes to remain anonymous, be certain that the higher education institution determines whether harassment is occurring or has occurred and takes actions to terminate the conduct.

Warning: The report form may become evidence in a lawsuit.

SEXUAL HARASSMENT INCIDENT REPORT

[Name of institution] is committed to prompt and humane resolution of sexual harassment complaints in a manner consistent with our sexual harassment policy. This form is to be used so that we can be certain that all necessary steps for resolution have been completed. Please feel free to attach as many additional sheets of information as you believe necessary. The contact person(s) will assist you in completion of this form if you wish. In this document the person alleging harassment will be called "Complainant" and the person against whom the complaint is made will be called "Respondent."

A. Reporting Person.

Name_____

Department_____

Name of Complainant if other than above_____

B. Contact person.

Name_____

Department_____

C. Respondent.

Name_____

Department_____

D. Statement of events provided by Complainant or Reporting Person. Please provide a detailed statement of the events of harassment, including dates, places, and names of witnesses. Please attach additional sheets if you need more space.

_____

_____

_____

_____

_____

_____

_____

_____

Signature of reporting person_____

Date_____

Signature of Complainant _____

Date_____

(Signatures are not required)

E. Statement of events provided by Respondent. Please provide a detailed statement of the events, including dates, places, and names

of witnesses. Please attach additional sheets if you need more space.

_____
_____
_____
_____
_____
_____
_____
_____

Signature of Respondent _____
Date_____
(Signature is not required)

F. For completion by contact person. Please provide a detailed statement of the events of harassment, including dates, places, and names of witnesses. Please describe resolutions, if any. Please attach additional sheets if you need more space. Attach copies of any documents that you have received. Upon completion, provide a copy of this form to Complainant, to Respondent, and to the institutional designee.

_____
_____
_____
_____
_____
_____
_____

G. For completion by institutional designee. Please provide a detailed statement of investigation of the events of harassment, including dates, places, and names of witnesses. Attach additional sheets if you need more space. Please attach copies of any documents that you have received. Upon completion, provide a copy of this form to Complainant and to Respondent.

_____
_____
_____
_____
_____
_____
_____

H. Determinations and discipline. Based upon the above process and in compliance with our Sexual Harassment Policy, [designated person or position] shall make the final determination of

be taken in this matter. Both Complainant and Respondent will be notified of that decision. Describe below the determinations made and state the discipline imposed if any. Attach additional sheets if you need more space.

_____
_____
_____
_____
_____
_____
_____

Date completed_____
Signature_____

I. Follow-up. On or about 30 days after the completion of the above process, [designated person] will contact each of the parties hereto. The purpose of this follow-up is to be certain that the complaint is resolved and that no retaliation or retribution has occurred. Describe below the results of the follow-up. Attach additional sheets if you need more space.

_____
_____
_____
_____
_____
_____
_____

Date completed_____
Signature_____

Appendix C

Advice Regarding Sexual Harassment

The following is a sample form to be distributed to employees at the time of employment and periodically (at least annually during training sessions) and to students at time of entry to the school. This form also should be posted in the workplace with the institution's sexual harassment policy.

Always tailor this form to fit the policy and goals of the campus.

ADVICE REGARDING SEXUAL HARASSMENT

Statement of philosophy. [Institution name] strives to recognize human dignity and therefore does not tolerate sexual harassment within or connected to this institution. Harassment is illegal and unfairly interferes with the opportunity for all persons, regardless of gender, to have a comfortable and productive work or education environment. We are committed to taking all reasonable steps to prevent sexual harassment and to discipline those who do harass.

Policy. We have adopted a policy regarding sexual harassment and you received a copy of that policy at the time of employment or entry into the school. Please refer to that policy from time to time so that you will remain familiar with its contents. A copy of the policy may be obtained from the contact persons designated below or from your supervisor or adviser.

Sexual harassment is any threatening, demeaning, humiliating, ridiculing, or offensive conduct or situation that unreasonably interferes with a person's ability to perform his or her job or academic pursuits and that is based on the sex of that person.

We recommend that you use [the reference library] or meet with a contact person if you have questions. Contact persons are listed on the next page.

Remember.

1. *"no means no"*—If you are told "no" to your request for a date or any other social activity or for physical or sex acts, do not persist. Do not assume that failure to say "no" means "yes."
2. If you believe that you are being harassed or you are receiving requests that you do not desire, *state "no" clearly.* In the event that you believe that sexual harassment has or is occurring, you are encouraged to communicate clearly, preferably in writing, to the harasser and state that the conduct is not acceptable.
3. Be aware that *a relationship that once was agreed to may become nonconsensual.* If that happens, stop and do not persist in further attempts to continue the relationship.
4. *Maintain records* of events that you believe might be harassment. You might wish to do this in the form of a detailed journal and you should maintain contemporaneous records throughout the process.
5. If you believe that you have been harassed, *please use the Sexual Harassment Report Form.* You can do this yourself or meet with one of the contact persons

designated below.

6. *When in doubt* about your conduct or the conduct of some other person, *meet with a contact person.* They are trained to help you.

Contact persons. You may choose from any of the following contact persons to report an incident.

1. Name_____
   Department_____
   Telephone_____

2. Name_____
   Department_____
   Telephone_____

3. Name_____
   Department_____
   Telephone_____

Appendix D

Sexual Harassment Survey

This survey form provides one way to determine if harassment is occurring. It is particularly critical to determine (and to correct) unreported or unresolved harassment. Based on the information obtained by this survey, an administrator can stop the harassing conduct and can modify institutional policy if necessary.

Please note that this document is intended as an example. Tailor the survey form to fit the particular characteristics of the campus.

When an administrator learns of particular instances of harassment or of a climate of harassment, action must be taken.

Warning: Do not use the survey form unless the higher education institution is committed to correcting the harassment or potential harassment that is discovered. These forms may become evidence in a lawsuit.

SEXUAL HARASSMENT SURVEY

[Name of institution] is committed to prompt and humane resolution of sexual harassment complaints in a manner consistent with our sexual harassment policy. This form is used so that we periodically can determine whether unreported or unresolved sexual harassment is occurring. These periodic surveys also allow us to modify our policy if necessary to maintain a harassment-free environment and to try to ensure that complaints are resolved in a just process. Our focus in this survey is primarily on unreported or unresolved instances of harassment because if a sexual harassment complaint has been reported and resolved we have a record under our procedures. We are interested in your opinions so please complete this form. Please note that this survey is completely confidential.

1. Gender: ❒ Female ❒ Male
2. Department or division_____
3. Date this form is completed_____
4. Have you ever been a victim of sexual harassment at this institution that was *not resolved*?
   - ❒ Yes (Check here if uncertain)
   - ❒ No (Please see section C)

A. If the answer above is yes and the harassment *was reported*, please explain why you think no resolution occurred. Feel free to attach additional sheets if you wish.

_____
_____
_____
_____
_____
_____
_____

B. If the answer above is yes and the harassment *was not reported*, please explain why you did not report the harassment. Feel free to attach additional sheets if you wish.

_____
_____
_____
_____
_____
_____
_____

C. Have you ever been accused of sexual harassment at this institution that *was not resolved*?

❒ Yes
❒ No

If the answer above is yes, please explain why you think no resolution occurred. Feel free to attach sheets if you wish.

D. If you have been involved in a sexual harassment complaint at this institution, please explain whether the complaint was handled in a satisfactory or unsatisfactory manner. Please also explain how the institution could better resolve sexual harassment complaints. Please feel free to attach additional sheets if you wish.

E. What do you think [name of institution] should do to prevent sexual harassment? Feel free to attach additional sheets if you wish.

Thank you for your time and assistance.

Appendix E

Additional Resources

General Information

Books

Deane, Nancy H., ed. 1986. *Sexual Harassment: Issues and Answers*. Washington, DC: College and University Personnel Association.

Dziech and Weiner. 1990. *The Lecherous Professor; Sexual Harassment on Campus*. Champaign, IL: University of Illinois Press.

McCann and McGinn. 1992. *Harassed: 100 Women Define Inappropriate Behavior in the Workplace*. Homewood, IL: Business One Irwin.

Paludi and Blackman. 1991. *Academic and Workplace Sexual Harassment*. Albany, NY: State University of New York Press.

Paludi. 1990. *Ivory Power, Sexual Harassment on Campus*. Albany, NY: State University of New York Press.

Petrocelli and Repa. 1992. *Sexual Harassment On The Job*. Berkeley, CA: NOLO Press.

Riggs, Murrell, and Cutting. 1993. *Sexual Harassment in Higher Education, From Conflict to Community*. Washington, DC: The George Washington University, School of Education and Human Development.

Articles

Aalberts and Seidman. 1994. "Sexual Harassment by Clients, Customers, and Suppliers: How Employers Should Handle an Emerging Legal Problem." *Employee Relations Law Journal* 20(1), p. 85.

Connell. 1991. "Effective Sexual Harassment Policies: Unexpected Lessons from *Jacksonville Shipyards*." *Employee Relations Law Journal* 17(2), p. 191.

Oh. 1992. "Internal Sexual Harassment Complaints: Investigating to Win." *Employee Relations Law Journal* 18(2), p. 227.

Watson. 1993-94. "Employer Liability for Sexually Harassing Actions of Its Customers." *Employee Relations Law Journal* 19(3), p. 227.

Training Information

Books

Brown, Valerie L. and Katherine Buttolph, eds. 1993. *Student Disciplinary Issues: A Legal Compendium*. Washington, DC: National Association of College and University Attorneys.

Burling. 1993. *Acquaintance Rape on Campus: A Model for Institutional Response*. Washington, DC: National Association of College and University Attorneys.

Dziech and Weiner. 1990. *The Lecherous Professor; Sexual Harassment on Campus*. Champaign, IL: University of Illinois Press.

Sandler. 1994. *Educator's Guide to Controlling Sexual Harassment*. Washington, DC: Thompson Publishing Group.

Videos*

Quality Media Resources. 1992. *The Issues is Respect*. Bellevue, WA: Quality Media Resources.

Quality Media Resources. 1992. *Management's New Responsibilities*. Bellevue, WA: Quality Media Resources.

* These videos are available from CUPA. Please call the Publications Department at 202-429-0311, Ext. 395 for more information.

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